IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO: 19219 of 2003

Between:

B.Nageswara Rao s/o.Late Satyanarayana
R/o.Gara Post & Mandeal Srikakulam District

... PETITIONER

AND

1 APSRTC Rep.by its Vice Chairman & Managing Director
Musheerabad Hyderabad - 500 020.
2 The Regional Manager APSRTC
Srikakulam Region Srikakulam
Srikakulam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of Writ of Mandamus or and other appropriate writ declaring the proceedings No.P1/684 (1)/2003:REM/SKLM dated 5-4-2003 in so far as not appointing the petitioner on regular basis as illegal and unjust; (ii) the action of the respondents in disengaging the services of the petitioner in the post of Conductor is illegal and arbitrary; (iii) declaring the action of the respondents in appointing petitioner in the post of Conductor on casual basis is illegal, arbitrary and unjust; consequently direct the respondents to regularise the services of the petitioner in the post of conductor with effect from the date, the route was nationalised.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: MR.Y.VIVEKANANDA SWAMY

The Court made the following Order:

ORDER:

Heard the learned counsel appearing for both the parties.

2. Petitioner was engaged as Conductor on a private vehicle on a bus bearing APS 9799 in the year 1987 on the route Kalingapatnam to Amadalavalasa. In November 1987, the above said route was nationalized and the A.P.S.R.T.C has become the exclusive operator on the said route. As the private routes were nationalized and as the petitioner was working on private route, he made a representation to the respondent-corporation to absorb him in the A.P.S.R.T.C in the year 1992. As his application was not considered, he filed W.P.No.11045 of 1993 seeking a direction to the respondents for his absorption in any suitable post in the A.P.S.R.T.C. The said Writ Petition was disposed of on 07-10-1993 directing the respondents to absorb the petitioner in any suitable post as and when vacancies arise and the petitioner was also directed to file a fresh representation within four weeks and on such representation, the respondents were directed to pass orders within six weeks thereof. Accordingly petitioner filed representation before the corporation, but the said representation of the petitioner for absorption was rejected. Aggrieved by the same, he filed another Writ Petition, being W.P.No.7292 of 1998 seeking a direction for his absorption for the post of Conductor or any other suitable post in the existing vacancies and also sought for a direction to implement the orders in W.P.No.11045 of 1993. The said W.P.No.7292 of 1998 was disposed of on 01-09-1998 directing the respondents to comply with the earlier orders passed in W.P.No.11405 of 1993 dated 07-10-1993 and a specific direction has been issued directing the respondents to absorb the petitioner in any suitable post within three months from the date of receipt of a copy of the said order. Aggrieved by the said order dated 01-09-1998 in W.P.No.7292 of 1998, respondents filed Writ Appeal No.1733 of 1998 and a Division Bench of this Court

dismissed the said Writ Appeal upholding the direction issued in favour of the petitioner. Aggrieved by the said order, respondents filed S.L.P.No.5350 of 2001, which was also dismissed by the Hon'ble Supreme Court of India. Thereafter, after the dismissal of the said S.L.P., by the Hon'ble Supreme Court, the Vice Chairman and Managing Director of the A.P.S.R.T.C passed orders for absorption of the petitioner to the post of Conductor against the displaced vehicle No.APS-9799 duly exempting from the ban imposed vide Circular No.61/90 dated 16-07-1998 to comply the order in W.P.No.7292 of 1998 dated 01-09-1998. Instead of implementing the said order of the Vice Chairman and Managing Director, the Regional Manager, Srikakulam issued a consequential order in proceedings No.HC/785 (47)/98-RM: SKM dated 05-06-2002 appointing the petitioner as a casual conductor. Pursuant to the said order of the Regional Manager dated 05-06-2002, the petitioner was disengaged and reengaged from time to time. Questioning the said action of the respondents, this Writ Petition is filed.

3. When there was a direction by this Court to absorb the petitioner and the said direction was ultimately upheld by the Hon'ble Supreme Court, and consequentially the Vice Chairman and Managing Director of the A.P.S.R.T.C also passed orders according sanction for absorption of the petitioner, there cannot be any justification on the part of the respondents to appoint the petitioner as a casual conductor. Appointing the petitioner as casual conductor will not amount to absorption. Absorption will always be as against a clear vacancy only. Accordingly the action of the respondents in appointing the petitioner as a casual conductor and reengaging the petitioner as a casual conductor on casual basis is set aside and the respondents are directed to absorb the petitioner as a conductor in a regular vacancy.

4. The Writ Petition is accordingly allowed as prayed for. No order as to costs.

(V. ESWARAIAH, J)

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the twentieth day of July two thousand and four.

July 20, 2004

MRR/CHVN

Copy to:

1 APSRTC Rep.by its Vice Chairman & Managing Director
Musheerabad Hyderabad - 500 020.
2 The Regional Manager APSRTC
Srikakulam Region Srikakulam
Srikakulam District.

3. Two C.D. Copies.